

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested. Claims 1, 3-11, and 13-25 are pending in this application. By this Amendment, claims 1 and 11 are amended. By this Amendment, no claims are added or cancelled. Claims 1, 11, 13, 17, 18, and 22 are the independent claims.

Rejections Under 35 U.S.C. 112

The Examiner has rejected claims 1 and 3-11 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended claims 1 and 11 to overcome this rejection. As such, Applicants respectfully request that this rejection be withdrawn.

Rejections Under 35 U.S.C. 103

The Examiner has rejected claims 1, 3-5, 7, 11, 13, 14, 17, 18, 22, and 23 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,574,211 to Padovani et al. ("Padovani") in view of U.S. Patent 6,907,020 to Periyalwar et al. ("Periyalwar"). The Applicants respectfully traverse this rejection for the reasons detailed below.

According to the new Examination Guidelines for Determining Obviousness under 35 U.S.C. § 103 in view of the Supreme Court decision of *KSR International, Co. v. Teleflex, Inc.* it is stated that the proper analysis for a determination of obviousness is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts. The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention

would have been obvious. An Office Action must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. See 72 Fed. Reg. 57526, 57528-529 (Oct. 10, 2007).

The Applicant asserts that neither Padovani nor Periyalwar, either separately or in combination, teach or suggest all of the limitations set forth in the claims, nor has there been a clear articulation made of why the differences between the prior art and the claims would have been obvious to one of ordinary skill in the art.

For example, independent claim 1 recites a method including a "schedule grant message further establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol." The Office Action, on page 4, admits that Padovani does not disclose that the grant sent from the base station to the mobile station will (1) establish a rate limit for further transmissions from the mobile station and (2) have a specified rate provided by the grant message in a rate control scheduling mode protocol.

In an attempt to cure this deficiency, the Office Action relies on Periyalwar. On page 4 of the Office Action, it is alleged that Periyalwar discloses a technique in the Abstract, and in Figure 1, for establishing a transmission rate between the base station and a mobile station that includes a rate-control bit message. Applicants disagree. The Abstract of Periyalwar does not describe establishing a transmission rate. As described in the Abstract of Periyalwar, voice and data communications are carried on at one or more variable rates. The Abstract also describes that "the allocation for the voice customers is not fixed but varies as the data rate varies over time."

The Office Action on page 4 also alleges Periyalwar at column 12, lines 63-67, teach that the rate between a base station and a mobile station includes a rate control bit message. Column 12, lines 63-67 of Periyalwar does discuss the base

station/network infrastructure determining a maximum data rate. However, Periyalwar does not describe a *rate control bit message* as alleged in the Office Action. The Office Action further alleges that item 806 of Figure 8 of Periyalwar describes a rate control bit message containing a specific rate of transmission. However Figure 8, at item 806, describes that, based upon indications from user terminals, a maximum data rate is determined for each user terminal. None of the cited portions of Periyalwar describe that a transmission rate between a base station and a mobile station includes a rate control bit message containing a specific rate of transmission as alleged.

The Office Action further alleges on page 4, that the Abstract of Periyalwar describes a rate control protocol to set transmission rates. However, as described above, the Abstract of Periyalwar merely describes data communications at one or more variable data rates. Nowhere does the Abstract describe a rate control protocol to set a transmission rate. On Page 4 of the Office Action, it is alleged that Periyalwar at column 4, lines 44-50, realizes the advantage of more effective power control by using variable data rate settings in a grant message. However, a review of the cited section of Periyalwar shows that Periyalwar merely describes that the length/duration of each of the user voice packets is conveyed in a four bit Explicit Data Rate Indication (EDRI) symbol that is mapped into one of a second set of Walsh functions and modulated onto the quadrature modulation phase (Q) of the carrier.

In short, the Examiner has not shown anywhere in Periyalwar the "schedule grant message [is] further establishing a rate limit for subsequent transmissions based on a rate control scheduling mode protocol" as recited in independent claim 1. Therefore, Periyalwar does not cure the admitted deficiencies of Pavadoni. Thus a *prima facie* case of obviousness has not been made. As such, Periyalwar and Pavadoni, alone or in combination, cannot render independent claim 1 obvious to one

of ordinary skill in the art. Independent claims 11, 13, 17, 18, and 22 contain features similar to the above-recited features of claim 1, and therefore are patentable for at least the same reasons stated above. The dependent claims, dependent on claims 1, 11, 13, 17, 18 and 22, are patentable for at least the same reasons stated above. As such, Applicants respectfully request that this rejection be withdrawn.

Also, the Examiner has rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Periyalwar and further in view of the article entitled "Distributed Resource Allocation for DS-CDMA based Multi-media Wireless LANs," 21 October 1998, IEEE Proceedings of MILCOM 1998, pg 583-588 to Lal et al. ("Lal"), claims 8-10, 15, 16, 19-21, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Periyalwar and further in view of U.S. Patent Publication 2003/0093364 to Bae et al. ("Bae"), claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Padovani in view of Periyalwar and further in view of U.S. Patent Publication 2004/0203397 to Yoon et al. ("Yoon"). These claims, dependent on independent claims 1, 13, 18 and 22, are patentable for at least the same reasons stated above.

CONCLUSION

In view of the above remarks and amendments, the Applicant respectfully submits that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

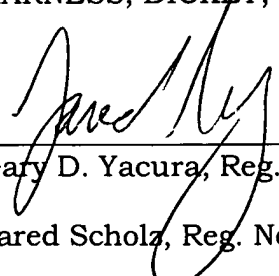
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By



Gary D. Yacura, Reg. No. 35,416

Jared Scholz, Reg. No. 64,088

P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

GDY/JBS